No. 47

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

976960—51

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 47

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

I

RESPONDENTS' ARGUMENTS RELATING TO THE LAND LEASED TO THE UNITED STATES ARE IRRELEVANT TO THIS CASE

In the lower courts, two cases were brought by respondents, one under the Tort Claims Act and the second under the Tucker Act. The Tucker Act claim related to land which had been leased to the United States. The Tort Claims Act claim embraced land which had been excepted from the lease. Our petition for writ of certiorari pointed

out (p. 1) that while it was believed that the judgments in both cases were erroneous, certiorari was sought to review only the judgment in the Tort Claims Act case. This was done in order to simplify the matter and to present more clearly the important issue whether the command of the Anti-Assignment Act can be avoided simply by joining assignors as parties defendant or unwilling plaintiffs. All of the arguments now advanced by respondents ignore the difference between the two cases, and are based upon conclusions drawn from transactions relating to the portion of the land the United States had leased. (We shall show *infra* that these conclusions are wholly lacking in factual support.) Indeed, respondents take the position (Br. 18–19) that there is no difference between the two cases. We submit that as to the claim asserted under the Tort Claims Act to recover damages for injury to land and buildings which had never been leased to the Government, respondents' arguments are irrelevant and present no ground for entry of judgment for the assignees of that claim.

II

THE PROHIBITION OF THE ANTI-ASSIGNMENT ACT MAY NOT BE DISREGARDED ON EQUITABLE PRINCIPLES

All of respondents' contentions relate to alleged equities and it is argued (Point I, Br. 7) that

"the operation of the Anti-Assignment Act, 31 U. S. C. 203, should not be invoked in this case." But, as we have shown in our main brief, pages 15–18, the statute does not empower the courts to relieve an assignee from its prohibition because of circumstances existing in a particular case. In this connection, we pointed out (Br. 12–13, 15) that the Act applies whenever and wherever a claim is presented and it cannot have a different application before the courts than it has before administrative tribunals. Respondents deny that any such result would follow affirmance of the decision below on the ground that the fiscal and accounting officers must follow the decisions of the courts (Br. 19–20). This is no answer to our position. The basis for the refusal of the court below to apply the Act is not any rule of law but simply that court's view of the circumstances of the particular case. This clearly appears from the concluding sentence of the majority opinion below that (R. 45) "No precedent is created which might lead to the evils that the statute was designed to prevent, for the relief is granted in the exercise of the equitable powers of the court which may not be availed of except in circumstances of hardship such as are here presented."

III

RESPONDENT'S ASSERTIONS AS TO THE ALLEGED INEQUITABLE CONDUCT OF GOVERNMENT AGENTS AND ALLEGED HARDSHIP ARE WHOLLY WITHOUT FACTUAL FOUNDATION

Respondents' contentions represent, in more extreme form, the argument as to mistake advanced in the majority opinion below (R. 43–44). There is neither evidence nor findings as to any such mistake since this theory first appeared in the decision below. As the dissenting judge said (R. 48–49) "There was no mention of mistake in the formal pleadings, or in the evidence, or in the judgment of the District Court, or in the briefs in this Court * * *."[1] Moreover, the conclusions of respondents are affirmatively disproved by facts in the record.

A. *The Alleged Inequitable Conduct of Government Agents.*—Respondents say that "agents of the United States, who knew of the assignment rights existing between the Boshamers and the Shannons, and who had obtained a lease of this property in question by promising the Shannons, in writing, that they would be protected in filing and prosecuting these rights, went to the Boshamers without warning, notifying or consulting the Shannons and obtained a release of those

[1] The view of the trial court, that the Anti-Assignment Act did not bar recovery, was established long prior to the trial when the Government's motion to dismiss was overruled.

damage claims from the Boshamers" (Br. 5). Elsewhere they describe the obtaining of the release as "what appears to have been an effort to thwart the Shannons in recovering upon these claims" (Br. 8; see also Br. 12, 14).

This argument ignores the facts and particularly the chronology of events. The attempted assignment was contained in the contract of sale of the property dated April 30, 1946 (R. 32–33). And the property was conveyed by deed on June 3, 1946 (R. 27). Government agents had no connection with this transaction. Thereafter, a tri-party contract was entered into dated June 20, 1946.[2] The contract recited the leasing of the property and the subsequent conveyance. It substituted the Shannons as lessors and it was agreed that rent for the period ending June 30, 1946, should be paid to the Boshamers. It was then provided (par. 3, R. 14–15):

> 3. First party [the Boshamers] herein agrees and hereby releases and discharges the Government, its officers and agents, of and from all actions, liabilities and claims against the Government, its officers and agents, for damages to or waste of the lands covered by said lease, or any part thereof, occasioned by the occupancy thereof by the Government prior to the convey-

[2] This contract was probably actually executed by all parties in early 1947 (R. 50, 34).

ance thereof by First Party to Second Party [the Shannons], to wit: June 3, 1946.

Finally, the agreement provided that the Shannons accepted the terms of the lease and it was signed by the Boshamers, the Shannons and the United States. No mention is made of any assignment of claims against the United States. Appended to the agreement was a separate statement signed only by the Shannons as follows (R. 15–16):

> The Second Parties, in executing this Supplemental Agreement, hereby remise, release and forever discharge the Government, its officers, agents, and employees of and from any and all manner of actions, liability, and claims (except for unpaid rent due for the period ending April 22, 1947) against the Government, its officers and agents, which the Lessor has or ever will have for the restoration of said premises, or by reason of any other matter, cause or thing whatsoever particularly arising out of said lease and the occupancy by the Government of the aforesaid premises, however, this waiver and release shall not be construed to apply to any legal claim for damages which the Second Parties may have by reason of damages, if any, to timber, terraces, fencing, and to land caused by army vehicles, tank implacements, and digging of fox holes, resulting in destruction of terraces and erosion during Government occupancy, and Second

> Parties expressly reserve the right to file and prosecute their claim for such damages so excepted from this release.[3]

There is nothing in the language of this reservation from which may be implied a promise on the part of government agents to recognize an assignment of claims against the United States, as asserted by respondents (e. g., Br. 4, 5, 6). Indeed, this provision contains no promise by the Government of any kind bu merely purports to reserve "any legal claim for legal damages" which the Shannons might have.

Referring to a formal release executed by the Boshamers under date of May 1, 1947, respondents charge government agents with unconscionable conduct in obtaining such release without the knowledge of the Shannons after execution of the supplemental agreement (Br. 2, 4, 5, 8, 10, 12, 14–15, 20). However, paragraph 3 of the supplemental agreement quoted above (pp. 5–6), released all claims of the Boshamers prior to the conveyance to the Shannons on June 3, 1946, and the damage here was done in January and February, 1945 (R. 27). The later release simply embodied paragraph 3 in more appropriate form. The release from the Boshamers was thus embodied in the agreement signed by the Shannons and there

[3] It should be noted that the damages awarded in the instant case, which are solely on account of injury to the two tenant houses and the barn (Fdg. 3, R. 27) would not seem to be embraced in this reservation.

is no warrant for the charge that it was obtained without their knowledge.

B. *Alleged Hardship.*—The Government had no part in the transaction by which the land was sold and the claim for damages was purportedly assigned to the Shannons. See the analysis of the facts by the dissenting judge below (R. 49–50). Respondents do not deny that, as pointed out by the dissenting judge, "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless" (R. 49). They simply say that this has no bearing upon the legal principles of this case (Br. 21). However, it is certainly material to the claims of hardship. It is evident that the Boshamers did not consider that any substantial portion of the consideration represented the claims assigned for, as they later stated in explaining why they refused to join as plaintiffs "they are without any knowledge or information as to any damages done to the said property" (R. 23). The Boshamers further statement in their answer denying that they are personally liable or responsible to the Shannons or anyone else for any act of damage (R. 24) is additional indication that the assignment of the claims was not a material factor in the sale.

Finally, respondents attempt to spell out some kind of hardship upon them resulting from the tri-party agreement. The sale and the purported assignment had been executed prior to that agreement. Respondents' notion that the tri-party

agreement represents a voluntary lease by them to the United States (Br. 7–8, 9, 10, 11, 12) is obviously fallacious. The land was already leased to the United States, the sale was necessarily subject to the lease and the agreement represented, not the making of a lease, but the substitution of the Shannons as lessors.[1] There is thus no basis for the assertion (Br. 9) "The Government has profited in its dealings with the Shannons by receiving a lease to the land in question." The Government already had the lease. And, in fact, the agreement was executed at a time when the Government was relinquishing possession (see R. 50, 34).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below is erroneous and should be reversed.

PHILIP B. PERLMAN,
Solicitor General.
WM. AMORY UNDERHILL,
Assistant Attorney General.
ROGER P. MARQUIS,
HAROLD S. HARRISON,
Attorneys.

NOVEMBER 1951.

[1] The contract of sale expressly stated (R. 32): "It is further agreed that the purchasers are purchasing this property subject to a certain lease over the property now held by the United States Government."

U. S. GOVERNMENT PRINTING OFFICE: 1951